

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**MAHASKA RURAL
WATER SYSTEM, INC.,
CITY OF ROSE HILL**

Wastewater Facility No. 6-62-79-0-01

**ADMINISTRATIVE
CONSENT ORDER**

NO. 2008-WW- 29

**TO: Byron Bruxvoort, President
Mahaska Rural Water System, Inc.
101 North J Street, P.O. Box 210
Oskaloosa, Iowa 52577**

**Randall Pleima, General Manager
Mahaska Rural Water System, Inc.
101 North J Street, P.O. Box 210
Oskaloosa, Iowa 52577**

I. SUMMARY

This administrative consent order (order) is entered into between the Department of Natural Resources (Department) and Mahaska Rural Water System, Inc. (Mahaska Rural Water) due to failure to timely apply to renew an NPDES Permit. This order assesses an administrative penalty of \$1,000.00. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Angela Foehring-Nkanta
Environmental Specialist, NPDES Section
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: (515) 242-6043

Relating to legal requirements:

Diana L. Hansen
Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: (515) 281-6267

Mail payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50310-0034

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II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties agree to the following statement of facts.

1. Mahaska Rural Water owns and operates the wastewater disposal system for the City of Rose Hill (City). Pursuant to an amendment to the NPDES permit on October 1, 2007, Mahaska Rural Water was issued an amended NPDES permit and was listed as the facility owner. The wastewater disposal system is located southwest of Rose Hill, Iowa. The legal description is T 75 N, Range 14W, Section 9, Mahaska County, Iowa.

2. The wastewater disposal system consists of a three cell waste stabilization lagoon that is operated as a controlled discharge system. The wastewater disposal system is operated pursuant to NPDES Permit No. 06-62-79-0-01, which expires on November 11, 2008. The wastewater disposal system discharges to an unnamed tributary to the South Skunk River.

3. The renewal application for the NPDES permit was required to be filed by 180 days prior to expiration of the NPDES permit or by May 15, 2008. This is a condition of the current NPDES permit and a requirement under Department rules. The Department sent a renewal application form to the City of Rose Hill on August 7, 2007. By a letter dated August 20, 2007 the City informed the Department that Mahaska Rural Water now owns and operates the wastewater disposal system that serves the City. The renewal application form was mailed to Mahaska Rural Water on September 7, 2007.

4. On July 9, 2008 the Department sent a notice of violation letter (NOV) to Mahaska Rural Water for failure to timely submit the completed renewal application. The NOV required submittal of a completed application and application fee by August 10, 2008 if the facility intended to renew the permit. The Department received a completed permit renewal application on September 9, 2008.

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter:

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1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from the Department. Iowa Code section 455B.183 prohibits the construction or operation of waste disposal systems without or contrary to written permits from this Department. Iowa Code section 455B.174 authorizes the Director to issue permits for the operation of a disposal system.

Iowa Code section 455B.171(5) defines "disposal system". Disposal system is defined as "a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge." The term "includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge." The three cell waste stabilization lagoon is considered a disposal system under this definition of disposal system.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems and discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Subrule 62.1(1) prohibits the discharge of pollutants to waters of the state unless authorized by a permit from this Department. Subrule 64.3(1) prohibits the operation of a waste disposal system unless authorized by a permit from this Department and prohibits operation of any waste disposal system contrary to any condition of a permit.

3. Department subrule 567 IAC 64.8(1) states that "[a]ny state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit." The terms of this facility's NPDES permit and the Department subrule required submission of an application for NPDES permit renewal to the Department no later than May 15, 2008. The Department received a completed NPDES permit renewal application for this facility on September 9, 2008. Mahaska Rural Water did not comply with subrule 567 IAC 64.8(1) since the permit renewal application was not submitted timely.

V. ORDER

THEREFORE, the Department orders and Mahaska Rural Water agrees to comply with the following provisions in order to resolve this matter:

Mahaska Rural Water agrees to payment of an administrative penalty of \$1,000.00. This penalty is due within thirty (30) days after the Director's signature to this order.

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VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$1,000.00.

a. **Economic Benefit.** The owner of this facility saved money by not allocating time and resources to the completion and submission of the NPDES permit renewal application. The amount of \$100.00 is assessed for this factor.

b. **Gravity of the Violation.** Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to timely submit a renewal application for an NPDES permit is a serious violation. The amount of \$500.00 is assessed for this factor.

c. **Culpability.** The Department sent a renewal application and a notice of violation letter to this facility advising it of its duty to timely submit its renewal application. The amount of \$400.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), and 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Mahaska Rural Water. By signature to this order, all rights to appeal this order are waived by all parties.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

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Byron Bruxvoort - Pres.
BYRON BRUXVOORT, PRESIDENT
MAHASKA RURAL WATER SYSTEM, INC.

Dated this 21 day of
October, 2008

Richard A. Leopold
RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 6 day of
Nov., 2008

Mahaska Rural Water System, Inc., City of Rose Hill- NPDES Permit No. 06-62-79-0-01,
Angela Foehring-Nkanta- NPDES Section, James Stricker- Field Office No. 5, Diana
Hansen-Legal Services, EPA Region VII, I.B.1, I.B.2.d.

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